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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/530,936	08/18/2000	Detlef Pickert	11150/8	6338

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KENYON & KENYON
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NEW YORK, NY 10004

EXAMINER

MCCALL, ERIC SCOTT

ART UNIT	PAPER NUMBER
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2855

DATE MAILED: 03/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/530,936

Examiner

Eric S. McCall

Applicant(s)

PICKERT ET AL.

Art Unit

2855

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33, 36 and 39-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33, 36, 39-47 and 49-52 is/are rejected.
- 7) ☒ Claim(s) 48 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 August 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application)
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____

- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

**METHOD AND DEVICE FOR MONITORING
AND/OR DETERMINING MOTOR OIL QUALITY**

FINAL OFFICE ACTION

In response to the Applicant's amendment (paper no. 11) dated Oct. 24, 2001.

DRAWINGS

✓ The drawings were objected to in the previous office action (7/24/01) under 37 CFR 1.83(a) because they fail to show the invention as claimed. The Applicant has argued otherwise. As such, the Examiner hereby withdraws said objection to the drawings. However, the Examiner hereby objects to the drawings because the drawings lack the structural detail essential for the proper understanding of the disclosed invention because the individual blocks of the block diagrams as shown in the drawings are not labeled.

The Applicants are reminded that any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Correction is required.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

ABSTRACT

Acknowledgement is made that the Applicant's new abstract has been received and entered into the application.

CLAIMS

Objections

Due to the Applicant's amendments, the objection to the claims as indicated in the previous office action is hereby moot.

35 U.S.C. 112

Due to the Applicant's amendments, the rejection of claims 17-38 under 35 USC 112, second paragraph, as indicated in the previous office action is hereby moot. However, the following now applies:

✓ Claims 33, 36, 39-44, and 49-52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention.

✓ Independent claim 39, is deemed as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. Specifically, the Applicant has set forth a method for determining motor oil quality comprising two steps however no relationship exists between the preamble of the claim (determining quality) and the body of the claim (determining viscosity) nor does a relationship exists between the two steps themselves. For example, oil viscosity is determined in one step, and a change in oil viscosity is determined in the other step, yet one step is not dependent upon the other step, for no mention is made in either step about the other step (both steps are independent of one another).

✓ Claim 43, the phrase “the engine acceleration power consumed” is indefinite as to the specific meaning thereof.

✓ Claim 49, the phrase “the internal combustion engine includes a diesel engine” is indefinite as to how one engine can include another engine.

✓ Claim 50, the phrase "the engine acceleration power consumed" (lines 2 & 4) is indefinite as to the specific meaning thereof.

✓ Claim 51, the phrase "the engine acceleration power consumed" is indefinite as to the specific meaning thereof.

35 U.S.C. § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 33, 36, 39, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vermeiren (4,888,976) in view of the teaching reference of Dickert et al. (6,223,589).

With regards to claim 39, Vermeiren teaches a method of determining motor oil quality, comprising the steps of:

determining a viscosity of the motor oil during operation of an internal combustion engine (col. 1, lines 18-21); and

determining and evaluating a change of the viscosity as an inherent function of a temperature and as a function of the power required to obtain a given motor speed (col. 1, lines 18-21).

Although Vermeiren fails to explicitly teach that the change in viscosity is a function of engine temperature, the Examiner contends that such a teaching is inherent because as it is very well known to one having ordinary skill in the art, as surely the Applicant can appreciate, oil viscosity is very dependent upon engine temperature (the teachings of Dickert et al. in col. 5, lines 20-22 is used as evidence to this fact).

Nonetheless, Vermeiren fails to teach the determining of a change in oil viscosity as a function of frictional torque of the engine. However, it would have been obvious to one having ordinary skill in the art armed with said teaching to determine a change in oil viscosity as a function of frictional torque of the engine. The motivation being that Vermeiren discloses in col. 1, lines 11-13 that oil viscosity is determined from a measured motor parameter. The Applicant has claimed that the oil viscosity is determined from a measured motor parameter in that frictional torque is a measured motor parameter. Continuing, the Applicant has defined the frictional torque as being the difference between the starter power and the acceleration power. As such, Vermeiren teaches (col. 1, lines 18-20) that the measured motor parameter is the power required to obtain a given motor speed which would suggest to one having ordinary skill in the

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art as being the frictional power from which the Applicant claimed frictional torque is determined.

With regard to claims 33 and 36, Vermeiren suggests a controller (13) for processing and transforming measured data, and a memory unit (12) with characteristic curves therein.

Claims 33, 36, and 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vermeiren (4,888,976).

Claim 45 parallels that of claim 39 but does require the particulars of the engine temperature as in claim 39 nor the determining of the change in oil viscosity. Thus, the Applicant's attention is directed to the above remarks regarding claim 39 minus the remarks about viscosity being dependent upon the engine temperature.

Regarding claims 33 and 36, see the corresponding above remarks.

With regards to claim 46, in addition to the above remarks, the suggestion of determining engine frictional torque corresponds to "estimating" engine frictional torque.

Allowable Subject Matter

Claims 41-44 and 48-52 would be allowable if rewritten to overcome any rejections under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

RELEVANT ART

Applicant's attention is directed to the enclosed "PTO-892" form for the prior art made of record and not relied upon but considered pertinent to the Applicant's disclosure.

CONCLUSION

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).


Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to Eric S. McCall at telephone number (703) 308-6968.


Eric S. McCall
Primary Examiner
A.U. 2855
March 08, 2002